SUPREME COURT, U. S.

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In the
Supreme Court of the United States

OCTOBER TERM, 1966

THE QUINAULT TRIBE OF INDIANS of the Quinault Reservation in the State of Washington, on its own behalf and on behalf of its members; and JAMES JACKSON, ALICE CHENOIS, PHILLIP MARTIN, JOHN SHALE, W. D. PETIT, BENNIE CHARLEY, FRANK CAPOEMAN and JESSIE CURLEY, on their own behalves and on behalf of the members of the Quinault Tribe,

Petitioners,

v.

A. M. GALLAGHER, individually and as Sheriff of Grays Harbor County in the State of Washington; JOHN J. O'CONNELL, individually and as Attorney General of the State of Washington; ALBERT D. ROSELLINI, individually and as Governor of the State of Washington,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH DISTRICT

MEMORANDUM FOR THE CONFEDERATED BANDS AND TRIBES OF THE YAKIMA INDIAN NATION AS AMICUS CURIAE

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This memorandum is submitted with the consent of each party, and pursuant to Rule 42, by The Confederated Bands & Tribes of the Yakima Indian Nation. Letters of consent are on file with the Clerk.

INTEREST OF AMICUS CURIAE

The Yakima Indians, which now compose The Confederated Bands & Tribes of the Yakima Indian Nation, like the Quinault Indians, have lived in the State of Washington since time immemorial. The Confederated Bands & Tribes of the Yakima Indian Nation presently has 5,506 enrolled members. In 1855 under the Treaty of Walla Walla[1] they ceded a large portion of their lands, reserving a certain small portion for "their exclusive use" and upon which "no white man" was to be permitted to reside without the permission of the Tribe.[2] The Yakimas differ from the Quinaults only in that they have never indicated through any member, body or official group by word, act or deed that they wished the State of Washington to assume jurisdiction over Indians on the Yakima Indian Reservation. The exercise of this reserved jurisdiction by The Yakima Indian Nation had been both traditional and extensive prior to the enactment of Chapter 36, Laws of 1963, State of Washington. The enactment of said Chapter 36 by the Washington State Legislature was opposed by the Yakima Indians, and they have a continuing real and sincere interest, and will be affected by the outcome of this challenge to the validity of said statute.

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[1]/ 12 Stat. 941 (1859)
[2]/ Id.

ARGUMENT

The decision below holds that the State of Washington, acting through its Legislature and Chief Executive, can assume jurisdiction in Indian country and can in the process pick and choose in what areas this jurisdiction shall be imposed, all while flaunting the mandatory requirements of the Federal Statute, Public Law 280, that the State Constitution be amended, ignoring the negating provisions in the enabling legislation concerning piecemeal jurisdiction, and without seeking any consent of either the Indian or the non-Indian citizens of the State of Washington.

This decision is of broad consequence, involving as it does the exercise of adequate law and order in substantial areas of this State, and affecting almost every governmental body operating therein, be it Indian, state, local or federal. Indians now lack the protection of adequate law enforcement. Basically local governments in the State of Washington are charged with the duty and cost of law enforcement. A substantial portion of the funds used for local law enforcement come from revenues derived from ad valorem real estate and personal property taxes from which Indian lands and the personal property thereon are exempt. To believe that a local government will accept its duty and provide adequate law and order in areas where tax money to support this duty is not forthcoming, challenges the credulity of any objective observer. The fear of the

Yakima Indians that they would not be provided with adequate law and order is now a reality. Within most minority groups where internal law and order are inadequate the people that suffer most from the inadequacy are other members of that same minority group. The present situation under Chapter 36 on Indian reservations establishes that the Indian people in the State of Washington are no exception to this general rule.

We would accept the statement and argument of the Quinault Indians in their Petition for Writ of Certiorari. We further believe that to allow the State to ignore the requirements of its State Constitution as to amendments thereof and flaunt the requirements of Public Law 280, the enabling legislation, requiring Constitutional amendments and proscribing piecemeal jurisdiction, is to indicate to the Indian people a total disregard for their traditional sovereignty established by treaty, custom and usage. We also point out that the non-Indian people in this area who have had this law enforcement duty placed upon them have not been accorded the privilege and right of expressing their views regarding this matter in the traditional and Constitutional manner. We find that the people who are really involved in this, both the Indians who have had their rights taken away from them without consent and the non-Indians who have had the duty of law enforcement on the reservation forced upon them without

consent, have not been involved in the decision making process. Indian country, in the main, is located in sparsely populated areas, and the Legislature in its apportionment, with a larger vote in the heavier populated areas, does not represent directly the interest of the people, and the local law enforcement agencies of the State of Washington, actually involved.

The court below, in holding that since the law provides that the Indians can petition for the State to assume full jurisdiction, the State has in no way violated any statutory requirement in assuming only partial jurisdiction, begs the question. The Yakima Indians feel that partial jurisdiction is better than total State jurisdiction, but this is clearly not the intention of the Congress that passed the enabling legislation in Public Law 280. This court pointed out in *Seymour v. Superintendent*, 368 U. S. 351, 357, 82 Sup. Ct. 424 (1962) that the type of checkerboard jurisdiction established by Chapter 36 has been clearly legislated against by Congress.

> "Such an impractical pattern of checkerboard jurisdiction was voided by the plain language of Sec. 1151, and we see no justification for adopting an unwarranted construction of that language where the results would be merely to re-create confusion Congress specifically sought to avoid."

SUMMARY OF THE ARGUMENT

From the foregoing, four things are apparent:

First, in assuming jurisdiction of Indian reservations the State of Washington failed to comply with

the mandatory language of Public Law 280 requiring amendment of State Constitutions.

Second, the Washington statute effectively amends the Washington Constitution without benefit of compliance with the Constitution's own requirements for amendment.

Third, the Washington legislative process has failed to allow voice to the people, both Indian and non-Indian, who are most affected by the law.

Fourth, Congress' grant of jurisdiction in Public Law 280 did not permit States to assume jurisdiction over Indian reservations in a piecemeal fashion, such as is attempted in Chapter 36.

CONCLUSIONS

For the foregoing reasons, we urge that the Petition for a Writ of Certiorari be granted, and that judgment of the United States Circuit Court of Appeals for the Ninth Circuit be reversed.

Respectfully submitted,

JAMES B. HOVIS
Counsel for the Confederated Bands & Tribes of the Yakima Indian Nation.

January, 1967.